



Pride and trepidation: Respecting and protecting indigenous knowledge

By **Wend Wendland**

Director, Traditional Knowledge Division, World Intellectual Property Organisation,
Geneva, Switzerland





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One Sunday in September 1998, I travelled to a flat, sun-baked area outside Upington in the Northern Cape, to meet with members of the San community. Amid the dusty Kalahari shrubs, community members spoke with pride about their unique history, culture, spirituality and languages. But they also expressed trepidation: while the San boasted a rich ancestral heritage, their legendary traditional lifestyles were under threat in an increasingly globalised, tech-connected world.

From the World Intellectual Property Organisation (WIPO), a United Nations agency based in Geneva, I was there to talk with the community about how they might better protect, commercialise and promote their remedies, songs, paintings and designs.

Admittedly, protection of these intangible assets is perhaps not the most significant problem these desperately poor communities face.

But you would not have thought so from the passion with which the community's leader, Petrus Vaalbooi, spoke to us: indigenous knowledge has great social and cultural value

in many communities, but may also provide new avenues for much-needed jobs and cash.

These are issues that resonate around the world. In numerous countries, in all regions, communities argue that their indigenous knowledge is not adequately protected by conventional intellectual property laws.

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Peru, India, Brazil, Kenya, Indonesia, Panama, Ghana, Tunisia, Thailand, the Cook Islands and Kyrgyzstan are just some countries that have enacted legislation to try to curb the misappropriation of indigenous knowledge.

South Africa, too, has been active: patent laws were amended a few years ago, and a new law amending local copyright, trademarks, performers and designs laws was signed into law in 2013.

But, the real prize lies internationally – after all, what South Africans want, surely, is not only that South African indigenous knowledge is protected in South Africa but that it is respected, recognised and protected in other countries.

This is why an international negotiation taking place at WIPO aimed at developing an international legal instrument is significant. South Africa, and other African countries, play a leading role in this negotiation.

But, the issues are not straightforward. The implications of introducing new property rights for age-old and often publicly available indigenous knowledge must be carefully thought through.

Intangibles – such as inventions, stories, art and music – are not the same as land and other tangibles. You can fence off a piece of land, but try fencing off ideas and artistic expressions! This is why designing rules for the protection of intangibles, whether in the form of “modern” or “traditional” knowledge, is especially challenging. Balance is key – balance between the interests of communities, creators and innovators, and the general public.

The San people have long thrived in the shimmering desert, finding innovative ways to meet basic needs, while creating a rich cultural life. The protection of indigenous knowledge is a new challenge.

No doubt, the treasure of wisdom that the ancestors have handed down to the San and other communities in South Africa will illuminate the path forward. 🌍

Wend Wendland is the Director, Traditional Knowledge Division, World Intellectual Property Organisation (WIPO), Geneva, Switzerland. This article was written in his personal capacity, and any views contained in the article are not necessarily the views of WIPO or any of its member states. The author can be contacted at wend.wendland@wipo.int



The Department of Environmental Affairs recently concluded a study on the traditional knowledge associated with two endemic species extensively utilised by bioprospecting and biotrade sectors in South Africa and abroad, namely: rooibos (*Aspalathus linearis*) and honeybush (*Cyclopia spp.*)

South Africa has a rich cultural heritage and is the third-most biological diverse country in the world. The country has an expansive history of indigenous and local communities using traditional knowledge on indigenous biological resources for, among other things, medicine and food. This biological and cultural wealth provides an important basis for commercial research and development, economic growth and development that underpins the well-being of the entire society and provides an extremely favourable environment for bioprospecting and biotrade for commercial gain.

The rooibos and honeybush species equally have a rich traditional knowledge. These species are being utilised commercially in the development of products such as medicine, food flavourings, cosmetics and extracts. These commercial activities are, however, regulated through the National Environmental Management: Biodiversity Act (NEMBA), 2004 and the Bioprospecting, Access and Benefit Sharing Regulations, 2008 (BABS Regulations). The legislation is further supported by the Nagoya Protocol

on Access to Genetic Resources and the Fair and Equitable Sharing of Benefit Arising from their Utilisation under the Convention on Biological Diversity, to which South Africa became a party in 2013.

In 2011, the department was approached by the South African San Council on behalf of the San people of South Africa, expressing concerns about inadequate acknowledgement, recognition and protection of their interest in relation to the ownership of traditional knowledge associated with the rooibos and honeybush species, which are being used commercially.

As a result, the department undertook a stakeholder consultative study to validate the rightful holders of traditional knowledge associated with these two species to ensure that they derive benefits from the utilisation of these species in the development of commercial products in terms of NEMBA and BABS Regulations.

The report has documented the origin of traditional knowledge associated with the rooibos and honeybush species; the original distribution of the species in South Africa and linked it with the existing traditional use by indigenous and local communities. The report also details the land history where these species naturally grow, including how the land was occupied and how the traditional knowledge has been developed and passed on from one generation to the next, as well as

how it was transferred from the original source to other tribes. In addition, the report spells out how the traditional knowledge associated with these species as an information source has provided valuable leads into the scientific and commercial environment; information on the existing commercial farming of these species in South Africa; and information on the existing wild harvesting activities in South Africa, including an accurate description of the indigenous and local communities involved.

The fact that these two species are endemic to the Cape Floristic Region, combined with the fact that the San and the Khoi people were historically residents in the natural distribution of these species for centuries, before the arrival of the settlers, and the fact that the industry has evolved and expanded in these particular areas, largely supports the concern raised by the South African San Council representing the San people of South Africa. The study has revealed that there is no evidence to dispute the claim by the San and the Khoi people of South Africa that they are the rightful holders of traditional knowledge associated with rooibos and honeybush.

In light of the finding, the department therefore urged any individual or organisation involved in bioprospecting or biotrade using rooibos and honeybush species to engage with the Khoi and San communities or people to negotiate a benefit-sharing agreement in terms of NEMBA and the BABS Regulations.

